(1)

Supreme Court, U.S.
FILED

95 541 SEP 28 1995

OFFICE OF THE CLERK

NO.

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1995

EX PARTE: CHARLES EUGENE CARPENTER,

Petitioner

IN RE: T. TRAVIS MEDLOCK, ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

3.75 ACRES OF REAL PROPERTY LOCATED IN MARLBORO COUNTY, SOUTH CAROLINA, AND ALL BUILDINGS, APPURTENANCES, AND IMPROVEMENTS THEREON, DEEDED TO DAVID AND VAUNICE REEP ON JANUARY 22, 1982 AND ON JUNE 1, 1982, AND TO ANOTHER PARTY IN APPROXIMATELY 1986, BUT NO DEED WAS RECORDED,

Defendants.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES FROM THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

Melvin L. Roberts
MELVIN L. ROBERTS & ASSOCIATES
Post Office Box 460
York, South Carolina 29745
(803) 684-9966
Attorney for Petitioner

42 pp

BRIEF OF PETITIONER

Petitioner, Charles Carpenter, hereby submits this Brief as his petition for a Writ of Certiorari to the Supreme Court of the United States.

QUESTIONS PRESENTED

1. Whether a separate civil forfeiture proceeding and a separate criminal prosecution proceeding and sentence violates the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution made applicable to the states by the Fourteenth Amendment?

2. Whether a separate civil forfeiture proceeding and a separate criminal prosecution proceeding and sentence violates the Excessive Fines Clause of the Eighth Amendment of the United States Constitution made applicable to the states by the Fourteenth Amendment?

TABLE OF CONTENTS

BRIEF OF PETITIONER.....i

QUESTIONS PRESENTED.....i

TABLE OF AUTHORITIES.....iii

OPINION BELOW.....2

JURISDICTION.....2

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.....2

STATEMENT OF THE CASE.....3

REASONS FOR GRANTING THE WRIT.....8

CONCLUSION.....31

TABLE OF AUTHORITIES

CASES

Austin v. United States, ____ U.S. ____, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993) 9, 22, 30

Hess v. Medlock, 820 F.2d 1368 (4th Cir. 1987).....9

United States v. Barton, 46 F.3d 51, 52 (9th Cir. 1995).....20

United States v. Chandler and Real Property Known as Tract 1 of Little River Farms, 1994 W.L. 523993 (4th Cir. (N.C.)) 22, 23, 29

United States v. $405,089.23 U.S. Currency et al., 33 F.3d 1210 (9th Cir. 1994).....11, 13, 16, 18

United States v. Halper, 490 U.S. 435, 109 S.Ct. 1892, 104 L.Ed.2d 487 (1989) 14

United States v. Milan, 2 F.3d 17 (2nd Cir. 1993).....16

United States v. Nussbaumer, 890 F. Supp. 947, 948 (D. Or. 1995).....20

United States v. Oakes, 872 F. Supp. 817, (E.D. Wash. 1994).....15

United States v. One Single Family Residence Located at 18755 N. Bay Road, Miami, 13 F.3d 1493 (11th Cir. 1994) 16, 17

United States v. Stanwood, 872 F. Supp. 791 (D. Or. 1994).....20

United States v. Ursery, 59 F.3d 568 (6th Cir. 1995).....16, 17

STATUTES AND OTHER AUTHORITY

S.C. Code Ann. §44-53-520 (Supp. 1994) 10

S.C. Code Ann. §44-53-586 (Supp. 1994) 11

U.S. Const. amend. V.....2, 8, 9, 14, 31

U.S. Const. amend. VIII.3, 22, 29, 30, 31

U.S. Const. amend. XIV.....3, 9, 21

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1995

EX PARTE: CHARLES EUGENE CARPENTER,

Petitioner,

IN RE: T. TRAVIS MEDLOCK, ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

3.75 ACRES OF REAL PROPERTY LOCATED IN MARLBORO COUNTY, SOUTH CAROLINA, AND ALL BUILDINGS, APPURTENANCES, AND IMPROVEMENTS THEREON, DEEDED TO DAVID AND VAUNICE REEP ON JANUARY 22, 1982 AND ON JUNE 1, 1982, AND TO ANOTHER PARTY IN APPROXIMATELY 1986, BUT NO DEED WAS RECORDED,

Defendants.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES FROM THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

Petitioner, Charles Carpenter, respectfully prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of the State of South Carolina entered on May

30, 1995, with the Petition for Rehearing denied on June 30, 1995.

OPINION BELOW

The decision of the Supreme Court of the State of South Carolina is opinion number 24249 and is reprinted as Appendix A. The Order denying a rehearing is reprinted as Appendix B.

JURISDICTION

The judgment of the Supreme Court of the State of South Carolina was entered on May 30, 1995, and a timely petition for rehearing was filed and subsequently denied on June 30, 1995. The jurisdiction of this Court arises under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fifth Amendment to the United States Constitution provides "...nor shall any person be subject for

the same offense to be twice put in jeopardy of life or limb..."

2. The Eighth Amendment to the United States Constitution provides "[e]xcessive bails shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

3. The Fourteenth Amendment to the United States Constitution provides "...no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction to the equal protection of the laws."

STATEMENT OF THE CASE

The State Grand Jury returned two (2) indictments against the Petitioner, Charles Carpenter, hereinafter referred to as "Carpenter", charging Carpenter

with two (2) counts of trafficking in cocaine and two (2) counts of trafficking in marijuana in March of 1990. Carpenter pled guilty on April 7, 1990, to one count of trafficking in cocaine under Indictment 90-GS-47-04-002 and one count of trafficking in marijuana under Indictment 90-GS-57-05-001 before the Honorable Edward B. Cottingham in Chester, South Carolina pursuant to a plea agreement with the State. Petitioner was sentenced by Judge Cottingham to twenty-five (25) years without parole and imposed a fine of $200,000 in reference to Indictment 90-GS-47-05-002 (the cocaine indictment). Petitioner was sentenced by Judge Cottingham to twenty-five (25) years without parole with a $50,000 fine in reference to Indictment 90-GS-47-05-001. This sentence was ordered to run consecutive with Petitioner's prior

sentence (Indictment 90-GS-47-05-002). The final Order in this matter was filed on February 3, 1992.

Petitioner was the owner of Defendant 3.75 acres. A Notice of Lis Pendens was filed on November 30, 1989, with the Clerk of Court for Marlboro County against Petitioner's real property, which consisted of approximately 3.75 acres of land and a cabin. On December 15, 1989, an Affidavit for Seizure was filed with the Clerk of the State Grand Jury and a Seizure Warrant was filed on December 15, 1989, with the Clerk of the State Grand Jury authorizing the seizure of Petitioner's real property. The State of South Carolina filed a Summons and Complaint for Forfeiture in Rem (89-CP-47-05-033) with the Clerk of the State Grand Jury on December 15, 1989. This case was stayed and later dismissed on

January 6, 1992. A new Summons and Complaint for Forfeiture in Rem (91-CP-47-05-104) was filed with the State Grand Jury against the Petitioner's property on December 20, 1991, with the designation Non-Jury. Petitioner filed a Counter-Return against this Complaint on or about January 17, 1992. A Petition for a Rule to Show Cause was filed by the State on February 12, 1993. A Rule to Show Cause was issued by Judge Edward Cottingham and filed on February 12, 1993, requiring Petitioner and others with interest in Petitioner's property to appear on March 25, 1993, at the Marlboro County Courthouse to show cause why an Order should not be issued forfeiting the said property. An Amended Rule to Show Cause was issued by Judge Cottingham and filed on March 3, 193, with the Clerk of the State Grand Jury requiring Petitioner and others with an interest in said property

to appear on March 22, 1993, or soon thereafter, to show cause why an Order should not be issued forfeiting said property.

A hearing was held on March 30, 1993, in Marlboro County before the Honorable Edward Cottingham. Petitioner was present and was accompanied by his appointed guardian ad litem, Charles G. Vaughan, Jr., Esquire. Petitioner was not represented by an attorney. At that hearing, Petitioner requested an attorney to represent him. The trial court refused Petitioner's request, determining that Petitioner had been given adequate opportunity to obtain legal representation. Petitioner also requested a jury trial which was denied by the trial judge. An Order and Judgment was filed on August 11, 1993, with the Clerk of the State Grand Jury ordering the property to be forfeited to the State of

South Carolina pursuant to S.C. Code Ann. §44-53-520 and §44-53-530 (1976, as amended)

Petitioner appealed to the South Carolina Supreme Court. The South Carolina Supreme Court issued its decisions which are reprinted as Appendix A and B.

The South Carolina Supreme Court affirmed the trial court's ruling, determining that the issues which are pertinent to this appeal were not raised below by the Petitioner. Petitioner timely filed a Motion for Rehearing on the issues relevant to this appeal which was denied by the Court.

REASONS FOR GRANTING THE WRIT

1. A separate civil forfeiture proceeding and a separate criminal prosecution proceeding and sentence violates the Double Jeopardy Clause of the Fifth Amendment made applicable to

the States by the Fourteenth Amendment of the United States Constitution.

Pursuant to the Fifth Amendment of the United States Constitution, no person is to be twice put in jeopardy for the same crime. This protection applies to the states as well as the federal government. **Hess v. Medlock**, 820 F.2d 1368 (4th Cir. 1987) The basis of the Double Jeopardy Clause, both state and federal, is the prohibition against successive attempts to punish in separate proceedings.

The question of whether a forfeiture action constitutes punishment has been answered in the affirmative by this Court in **Austin v. United States**, ____ U.S. ____, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993). Under the standards set forth in **Austin**, it is necessary to look at the statute to determine its purpose and function. The South Carolina forfeiture

statutes at issue in this case are tied to the culpability of the owner as the statue provides a means for an innocent owner to recover his property.[1] Also,

---

1. S.C. Code Ann. §44-53-520 (Supp. 1994)

> (a) The following are subject to forfeiture:
> (2) all raw materials, products, and equipment of any kind which are used, or which have been positioned or use, in manufacturing, producing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this article;
> (3) all property which is used, or which has been positioned for use, as a container for property described in items (1) or (2);
> (4) All property, both real and personal, which in any manner is knowingly used to facilitate production, manufacturing, distribution, sale, importation, exportation, or trafficking in various controlled substances as defined in this article;
> (7) all property, including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in

the statute ties forfeiture to the criminal activity of the use of the property. As such, the South Carolina forfeiture statutes were clearly enacted as a means of punishment as well as for arguably remedial purposes. See United States v. $405,089.23 U.S. Currency et al., 33 F.3d 1210 (9th Cir. 1994).

---

exchange for a controlled substance, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange;

S.C. Code Ann. §44-53-586 (Supp. 1994) - innocent owners
(b) The court may return any seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence:
(1) in the case of an innocent owner, that the person or entity was not a consenting party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

The second issue is whether the civil forfeiture action constitutes a separate proceeding affording Double Jeopardy protection or whether it is part of the criminal action. The important facts to consider in that regard are the time, place and setting of the forfeiture action as well as the evidence presented.

In this case, the State filed an Affidavit for Seizure and a Summons and Complaint for Forfeiture in Rem (89CP4705033) with the State Grand Jury on December 15, 1989. A Seizure Warrant was also filed on December 15, 1989, with the Clerk of the State Grand Jury, authorizing the seizure of Petitioner's property, the Defendant 3.75 acres with a cabin attached. Petitioner was indicted in March of 1990 and pled guilty on April 7, 1990, to one count of trafficking in cocaine under Indictment 90-GS-47-04-002 and one count of trafficking in marijuana

under Indictment 90-GS-57-05-001 before the Honorable Edward B. Cottingham in Chester, South Carolina. The civil forfeiture action filed on December 15, 1989, was stayed at the request of Petitioner's attorney and with the consent of the State on April 30, 1990. That action was later dismissed on January 6, 1992, as a result of a new Summons and Complaint having been filed by the State under Civil Action Number 91CP4705104 dated December 20, 1991. This forfeiture action was based upon the same activities which the Petitioner was charged with and to which he pled guilty. The Ninth Circuit Court of Appeals recently held that actions such as these violate the Double Jeopardy Clause of the U.S. Constitution. **U.S. v. $405,089.23 U.S. Currency, et al.**, 33 F.3d 1210, 1214 (9th Cir. 1994)

The Fifth Amendment of the United States Constitution bars a subsequent prosecution for the same offense after an acquittal, a subsequent prosecution or the same offense after a conviction and multiple punishments for the same offenses. **United States v. Halper**, 490 U.S. 435, 440, 109 S.Ct. 1892, 1897, 104 L.Ed.2d 487 (1989). In the case at hand, the State seized Petitioner's property, indicted him on criminal charges, consented to a stay of the civil forfeiture, and then refiled a new civil forfeiture action after the Petitioner pled guilty to the criminal charges. The State's actions amount to two trials and two penalties for the same criminal offense.

The forfeiture action in this case was a separate and distinct proceeding from the criminal action. The purpose of the forfeiture, although labeled civil,

was clearly to punish. The forfeiture was instituted at a separate time and tried before a separate fact finding authority, seeking to impose punishment and actually imposing punishment on Petitioner after he had already pled guilty. The State had the ability to institute a criminal forfeiture action but instead chose to institute a second, separate action for the same offense, punishing Petitioner a second time in violation of the Double Jeopardy Clause.

The fact that Petitioner chose to plead guilty to the criminal charges and forego a jury trial does not constitute a waiver of the double jeopardy challenge. In **United States v. Oakes**, 872 F. Supp. 817, (E.D. Wash. 1994), a Washington federal district court held that a guilty plea did not waive the double jeopardy challenge which was based entirely on the facts of the indictment as well as the

record in the prior civil forfeiture and criminal proceeding. In this case, the State prosecuted the civil forfeiture proceeding based entirely upon evidence and testimony used to obtain the criminal indictment and guilty plea.

The Circuits are split on whether or not a parallel proceedings such as the one in this case violates the Double Jeopardy Clause. While the Sixth and Ninth Circuits have ruled in the affirmative, the Second and Eleventh Circuits have held that parallel civil forfeiture actions are not "separate proceedings" for double jeopardy purposes and therefore, there is no double jeopardy violation. **See United States v. Ursery**, 59 F.3d 568 (6th Cir. 1995); **United States v. $405,089.23 U.S. Currency, et al.**, 33 F.3d 1210 (9th Cir. 1994); **United States v. Milan**, 2 F.3d 17 (2nd Cir. 1993); **United States v. One**

Single Family Residence Located at 18755 North Bay Road, Miami, 13 F.3d 1493 (11th Cir. 1994).

In **United States v. Ursery**, 59 F.3d 568 (6th Cir. 1995), the court held that a civil forfeiture followed by a criminal conviction violates double jeopardy. In that case, the court held that the forfeiture and the conviction were "punishment for the same offense because the forfeiture necessarily requires proof of the criminal offense". **Id**. at 573-574. The civil forfeiture and the criminal proceeding were instituted months apart, were presided over by different judges and were determined by separate judgments. The court considered these factors in determining that the two proceedings were not part of a single proceeding, but were in fact, two separate proceedings, to which double jeopardy applies.

In **United States v. $405,089.23 U.S. Currency, et al.**, the government sought forfeiture of money on the grounds that it was the proceeds of illegal narcotic transactions and that the money was the proceeds of money laundering. The government had previously obtained the convictions of the three owners of the money and relied on the same conduct addressed in the criminal case. The Ninth Circuit held the government's strategy was in violation of the Double Jeopardy Clause because the forfeiture action extracted a penalty related to the same criminal conduct and was tantamount to two trials for the same criminal offense.

In this case, the Petitioner's property was seized by the State pursuant to a civil forfeiture action. Petitioner was then indicted and pled guilty to two trafficking charges. After Petitioner

pled guilty, the government instituted another separate civil forfeiture action and based its prosecution on evidence developed or arising out of the criminal charges. This constituted multiple punishment for the same crime in violation of the Double Jeopardy Clause.

Another issue which deserves resolution by this Court is to which proceeding did double jeopardy attach. The Defendant property was seized first by the State pursuant to a civil forfeiture action. Petitioner was then indicted on criminal charges to which he pled guilty. The State then instituted another civil forfeiture action against the Petitioner after he pled guilty.

Petitioner asserts that jeopardy attached when the first civil forfeiture action was filed in December of 1989. Although the land itself was the subject of this action, Petitioner was being

punished by the seizure of his land. The subsequent criminal proceeding was violated the Double Jeopardy Clause.

In **United States v. Nussbaumer**, 890 F. Supp. 947, 948 (D. Or. 1995), the court noted that jeopardy attaches in a criminal action when a guilty plea is accepted by the court and jeopardy attaches in a civil forfeiture proceeding when judgement is entered. **United States v. Stanwood**, 872 F. Supp. 791 (D. Or. 1994) Using this analysis, jeopardy attached in this case in April of 1990 when Petitioner pled guilty and the double jeopardy violation was the subsequent civil forfeiture judgement which was entered on August 11, 1993.

The Ninth Circuit has stated that jeopardy attaches no earlier than the date the defendant files an answer to the forfeiture complaint. **United States v. Barton**, 46 F.3d 51, 52 (9th Cir. 1995)

Following this analysis, Petitioner filed his Counter Return to the second Summons and Complaint on January 17, 1992. Therefore, the civil forfeiture would be a violation of the double jeopardy clause.

Because the circuit courts are split in their decisions regarding the double jeopardy challenge to civil forfeitures and as to when jeopardy attaches in these proceedings, this Court should grant certiorari in this case to clarify the law and establish conformity among the circuit courts and state courts.

2. A separate civil forfeiture proceeding and a separate criminal prosecution and sentence violates the Excessive Fines Clause of the Eighth Amendment of the United States Constitution made applicable to the states by the Fourteenth Amendment.

Petitioner pled guilty and was sentenced with regard to those charges. Despite the plea, the State Grand Jury continued to pursue a course of conduct aimed at punishing the Petitioner. In **Austin v. United States**, ___ U.S. ___, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993), the Supreme Court held that the Excessive Fines Clause of the Eighth Amendment is applicable to civil forfeitures. The Supreme Court reserved for the lower court the ability to formulate their own tests to determine excessiveness. Two such tests have been adopted by the lower courts: a proportionality test and an instrumentality test. The Fourth Circuit adopted an instrumentality test in **U.S. v. Chandler and Real Property Known as Tract 1 of Little River Farms**, 1994 W.L. 523993 (4th Cir. (N.C.)).

The three-part instrumentality test considers "(1) the nexus between the

offense and the property and the extent of the property's role in the offense, (2) the role and culpability of the owner, and (3) the possibility of separating offending property that can readily be separated from the remainder." U.S. v. Chandler and Real Property Known as Tract 1 of Little River Farms, 1994 W.L. 523993, *5 (4th Cir. (N.C.)) The court further set forth that the following factors may be taken into account when determining the nexus between the property and the offense:

> "(1) whether the use of the property in the offense was deliberate and planned or merely incidental and fortuitous; (2) whether the property was important to the success of the illegal activity; (3) the time during which the property was illegally used and the special extent of its use; (4) whether its illegal use was an isolated event or has been repeated; and (5) whether the purpose of acquiring, maintaining or using the property was to carry out the offense." Id at *6.

These factors are to be looked at as a whole with no one factor being disposition.

From the Record and the State's own admissions, there was little, if any, nexus between Petitioner's home, which is the subject of the forfeiture action, and any drug activity. (State's attorney admitted that the State was not contending that drugs were imported at the home and that to the State's knowledge, Petitioner avoided drug deals at the home, R. p. 132, lines 4-7; Special Agent Butch Knight testified that he had recovered only a small quantity of marijuana and cocaine residue from the house on only one occasion, R. p. 102, lines 8-12; Ken Hoover testified that Petitioner told him he did not do any dealing at the home, R. p. 121, lines 3-4, and that there were never any large quantities of drugs at the house, R. p.

120, lines 23-25; James Carlos Plyler testified that he never saw any cocaine in the home, R. p. 123, line 23-p. 42, line 6) The only activity the State could tie to the house was one payment made by Darlene Boyd which was allegedly made for drugs. (R. p. 128, lines 15-18) Although the State purportedly was not going forward on the theory that the home facilitated the drug business and instead was pursing the forfeiture based upon its alleged purchase with drug proceeds, almost all of the State's evidence dealt with attempts to tie the drug trade into the home.

Petitioner sets forth that the above facts in light of the factors to consider in analyzing the nexus prong of the test demonstrates that no nexus existed between the Petitioner's real property and the drug transactions for which Petitioner was accused or to which he

pled guilty. Petitioner's real property was not used in any way with drug activity, either deliberately or planned, incidental or fortuitously. Petitioner's cabin played no part in the alleged drug activity. The cabin was not used during the alleged conspiracy nor was it used in furtherance of the alleged conspiracy. If the property was ever used during the alleged conspiracy, which was denied, its use was isolated. The real property was in no way acquired, maintained or used to carry out the conspiracy and no competent evidence existed to assert such. Therefore, the State failed to establish any nexus between the real property and the alleged conspiracy.

Special Agent Eddie Jordan testified that Petitioner indicated that his income came from gambling which was consistent with Petitioner's contentions at trial and the testimony of the State's witness

Kenny Ray Taylor. (R. p. 126, lines 10-16; R. p. 145, lines 11-13) Petitioner was given an extension by the court to produce evidence of his income which he did by timely supplying the court with his income tax returns which evidenced $36,000.00 earned in 1986 from gambling. Petitioner only paid $7,500.00 for the property and his family and friends helped him fix it up. Petitioner submits that he presented the court with substantial evidence that he earned enough income to purchase the property and that information combined with the trial testimony that Petitioner did much of the repair work himself was substantial evidence that the home and land was not purchased with drug proceeds.

Considering the factors outlined above, there was no showing that the use of the property was deliberate or planned

in the drug trade. Quite to the contrary, there was substantial evidence that the home was not used to further the drug business and that no drug activity occurred there. Since drug activity did not occur at the home, the property was certainly not important to the success of the drug trade. As there were no allegations that the property was illegally used, factors three and four do not apply. There was no testimony that the property was purchased to carry out the drug trade. Considering these factors, it is impossible to establish a nexus between the offense (drugs trafficking) and the property. From the evidence of record and the Petitioner's affidavit submitted with his income tax returns, the property can easily be separated from the drug activity which Petitioner pled guilty to in a separate action. Applying the factors as set

forth by the Fourth Circuit in **United States v. Chandler and Real Property Known as Tract 1 of Little River Farms**, 1994 W.L. 523994 (4th Cir. (N.C.)), Petitioner submits that the civil forfeiture was a violation of the Excessive Fines clause of the Eighth Amendment.

Petitioner further submits that the test outlined above is not the proper test in this case because it is a instrumentality test rather than a proportionality test. There was no evidence of record that the cabin was used as an instrument in the drug trade and the State contended that it was pursuing the forfeiture wholly based on a proceeds analysis. Accordingly, the forfeiture should only be evaluated in a proportionality context. Petitioner submits that he submitted substantial evidence to the court which refuted the

State's claims that he did not generate any income so that the income for the property must have come from drug proceeds. Petitioner also submits that the testimony at trial refutes the State's allegations because the testimony reflected that Petitioner did much of the improvements on the property himself. (Special Agent Eddie Gordon testified that Petitioner told him that the fence erected around the home, which was one of the improvements cited by the State, belonged to Petitioner's brother, R. pp. 132-133) Petitioner has consistently maintained that the improvements on the home were constructed by Petitioner himself or by his friends and relatives.

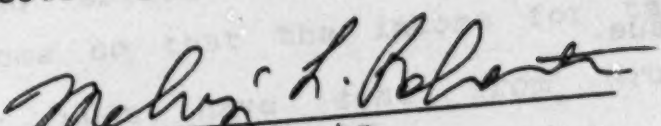
Petitioner submits that the Eighth Amendment Excessive Fines issue and the implications of **Austin v. United States**, ___ U.S. ___, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993), should be reheard for a

determination on the merits of that issue.

CONCLUSION

By instituting a separate civil proceeding after Petitioner had already pled guilty, the government violated the Petitioner's rights afforded by the Double Jeopardy Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment of the United States Constitution. The decision of the South Carolina Supreme Court has violated the aforementioned rights of the Petitioner. This Court should accept Certiorari to address these matters.

Respectfully submitted,



Melvin L. Roberts
MELVIN L. ROBERTS & ASSOCIATES
Post Office Box 460
York, South Carolina 29745
(803) 684-9966
Attorney for Petitioner

NO.

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1995

EX PARTE: CHARLES EUGENE CARPENTER,

Petitioner

IN RE: T. TRAVIS MEDLOCK, ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

3.75 ACRES OF REAL PROPERTY LOCATED IN MARLBORO COUNTY, SOUTH CAROLINA, AND ALL BUILDINGS, APPURTENANCES, AND IMPROVEMENTS THEREON, DEEDED TO DAVID AND VAUNICE REEP ON JANUARY 22, 1982 AND ON JUNE 1, 1982, AND TO ANOTHER PARTY IN APPROXIMATELY 1986, BUT NO DEED WAS RECORDED,

Defendants.

APPENDIX
PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES FROM THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

Melvin L. Roberts
MELVIN L. ROBERTS & ASSOCIATES
Post Office Box 460
York, South Carolina 29745
(803) 684-9966
Attorney for Petitioner

APPENDIX A

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Ex parte: Charles Eugene Carpenter,

Appellant,

In re: T. Travis Medlock,
Attorney General for the State
of South Carolina,
Respondent,

v.

3.75 Acres of Real Property
located in Marlboro County,
South Carolina, and all buildings,
appurtenances, and improvements
thereon, deeded to David and
Vaunice Reep on January 22,
1982, and on June 1, 1982, and
to another party in approximately
1986, but no deed was recorded,
Defendants.

Appeal From Marlboro County
Edward B. Cottingham, Judge

Opinion No. 24249
Heard March 21, 1995 - Filed May 30, 1995

AFFIRMED

Melvin L. Roberts, of York, for appellant.

T. Travis Medlock, Attorney General, Charles W. Gambrell, Jr., Chief Deputy Attorney, and Anne Hunter Young, Assistant Attorney General,

All of Columbia, for respondent.

PER CURIAM: **Scott v. Illinois**, 440 U.S. 367 (1979)(no sixth amendment right to counsel where no deprivation of physical liberty); **First Savings Bank v. McLean**, ___ S.C. ___, 444 S.E.2d 513 (1994)(continuance within trial judge's discretion); **Talley v. S.C. Higher Educ. Tuition Grants Committee**, 289 S.C. 483, 347 S.E.2d 99 (1986)(issue not raised below is not preserved for appeal).

s/ Ernest A. Finney, Jr. C.J.

s/ Jean H. Toal A.J.

s/ James E. Moore A.J.

s/ John H. Waller, Jr. A.J.

s/ A. Lee Chandler A.A.J

APPENDIX B

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Ex parte: Charles Eugene Carpenter,

Appellant,

In re: T. Travis Medlock,
Attorney General for the State
of South Carolina,
Respondent,

v.

3.75 Acres of Real Property
located in Marlboro County,
South Carolina, and all buildings,
appurtenances, and improvements
thereon, deeded to David and
Vaunice Reep on January 22,
1982, and on June 1, 1982, and
to another party in approximately
1986, but no deed was recorded,
Defendants.

ORDER

The following Order has been endorsed on your Motion for Rehearing in the above entitled case on appeal.

"Petition for Rehearing is denied.

s/ Ernest A. Finney, Jr. C.J.

s/ Jean H. Toal A.J.

s/ James E. Moore A.J.

John H. Waller, Jr. A.J.

A. Lee Chandler A.A.J

June 30, 1995."